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Gentner Trucking Co. and Gentner, Inc., Debtor-in-Possession, a Single Employer, and/or Joint Employers, and/or Alter Egos and Local 164, International Brotherhood of Teamsters. Cases 07-CA-071542 and 07-CA-084341

April 23, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges and amended charges filed by Local 164, International Brotherhood of Teamsters (the Union), the General Counsel issued the amended consolidated complaint on August 31, 2012, against Gentner Trucking Co. (Respondent GTC) and Gentner, Inc. (Respondent GI) (collectively, the Respondents), alleging that they have violated Section 8(a)(5), (3), and (1) of the Act.

Subsequently, the Respondents and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 7 on December 11, 2012. Pursuant to the terms of the settlement agreement, the Respondents agreed, among other things, to make whole certain named employees by paying backpay in the total amount of \$105,069.95, to be paid in equal monthly installments to the Region beginning on June 30, 2013.

The settlement agreement also contained the following provision:

The Charged Parties agree that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Parties, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Parties, the Regional Director will reissue the amended consolidated complaint previously issued on August 31, 2012, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the amended consolidated complaint. The Charged Parties understand and agree that the allegations of the aforementioned amended consolidated complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the amended consolidated complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Parties/Respondent at the last address provided to the General Counsel.

By letter dated July 2, 2013, the Region advised the Respondents that they had failed to comply with the settlement agreement's requirements by failing to submit the first scheduled installment payment to the Region on June 30, 2013. The letter further advised the Respondents that the settlement agreement provided that in the event of default on the installment schedule, the full \$105,069.95, less any amounts paid, could become immediately due and payable. Pursuant to this provision, the letter advised the Respondents that, in the event that the tardy first payment was not received by July 12, 2013, the Region might seek to invoke the penalty provision and require immediate payment of the entire \$105,069.95. The Respondents failed to comply.

The Region's July 2, 2013 letter did not further advise the Respondents that continued noncompliance could result in the Region reissuing the complaint and seeking default judgment. However, as stated above, the noncompliance provision of the settlement agreement provided that the Regional Director could take such action 14 days after providing notice of such noncompliance without remedy by the Respondents.

Accordingly, on August 29, 2013, the Regional Director reissued the amended consolidated complaint. On August 30, 2013, the General Counsel filed a Motion for Default Judgment with the Board. On September 4, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondents have failed to comply with the terms of the settlement agreement. Consequently, pursuant to the noncompliance provisions

of the settlement agreement set forth above, we find that all of the allegations in the reissued amended consolidated complaint are true. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent GTC has been a corporation with an office and place of business in Saline, Michigan, and has been engaged in the interstate transportation of freight, including aggregates of various kinds.

At all material times, Respondent GI has been a corporation with an office and places of business in Saline, Michigan, and has been engaged in the interstate transportation of freight, including aggregates of various kinds.

At all material times, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common insurance, purchasing, and sales; and have held themselves out to the public as a single integrated business enterprise. Based on their operations described above, the Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

At all material times, Respondent GI has possessed and exercised control over the labor relations policy of Respondent GTC and administered a common labor policy with Respondent GTC for the employees in the unit described below.

At all material times, the Respondents have been joint employers of the employees in the unit.

At all material times, the Respondents have had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

About January 2, 2012, Respondent GI assumed the operation of Respondent GTC, as a continuation of Respondent GTC.

Based on the operations and conduct described above, the Respondents are and have been at all material times alter egos and a single employer within the meaning of the Act. Since about July 6, 2011, Respondent GI has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business.

In conducting the operations described above, during the calendar year 2011, the Respondents collectively derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Michigan to points outside the State of Michigan.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondents within the meaning of Section 2(11) and agents of the Respondents within the meaning of Section 2(13) of the Act:

William Gentner - President

Robert Gentner - Vice President

At all material times the following individuals held the positions set forth opposite their respective names and have been agents of the Respondents within the meaning of Section 2(13) of the Act:

Scott Wertzbar - Accountant Dale Fruchey - Dispatcher

The following employees of the Respondents (the unit) constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the transportation of aggregate commodities of every kind of nature, cinders, clay, sand, gravel, dirty dry and wet batch concrete, mixed or unmixed earth, fill material, barrow material, marl, pebbles, stones chips and slag, when such commodities are being transported by a certified motor carrier, that, a carrier holding a certificate duly issued by the Michigan Public Service Commission to transport any or all such commodities, or any or all of such commodities as are being transported by an independent carrier for hire, employed by Respondents at or out of its Saline facility, but excluding guards and supervisors as defined in the Act.

Since about 1980, and at all material times, Respondent GTC has recognized the Union as the exclusive col-

¹ See *U-Bee*, *Ltd.*, 315 NLRB 667 (1994).

lective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2009 through March 31, 2012 (the 2009–2012 agreement). At all times since about 1980, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondents engaged in the following conduct:

- 1. About December 20, 2011, Respondent GTC failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to meet and respond to grievances filed by the Union.
- 2. About January 2, 2012, the Respondents failed to continue in effect all the terms and conditions of the collective-bargaining agreement, by among other things (a) unilaterally reducing unit employees' rate of pay, number of paid holidays, and paid vacation; (b) unilaterally changing unit employees' health, dental, short and long term disability, life, and AD&D insurance; and (c) unilaterally eliminating the seniority provision(s).
- 3. Since about January 2, 2012, the Respondents failed and refused to adhere to the 2009–2012 agreement.
- 4. The subjects set forth above in paragraphs 1 through 3 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.
- 5. The Respondents engaged in the conduct described in paragraphs 1 through 3 without providing the Union with prior notice or an opportunity to bargain, and without the Union's consent.
- 6. About January 2, 2012, the Respondents, by their agents William Gentner, Robert Gentner, and Scott Wertzbar, at the Respondents' Saline facility, bypassed the Union and dealt directly with its unit employees by negotiating employees' wage rates.
- 7. About January 2, 2012, Respondent GTC withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.
- 8. About March 2012, the Respondents failed to recall unit employees Howard Kapp and William Ruff.
- 9. About March 2012, by the conduct described in paragraphs 1 through 7, the Respondents caused the termination of unit employees Mark Bunton, Jeffrey Gryca, and Ronald Vincent.
- 10. The Respondents engaged in the conduct described in paragraphs 8 and 9 because their employees engaged in Union and concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

- 1. By the conduct described above in paragraphs 1 through 8, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(5) and (1) of the Act.
- 2. By the conduct described above in paragraphs 8 and 9, and for the reasons set forth above in paragraph 10, the Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.²
- 3. The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.³ Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by, on about January 2, 2012, withdrawing recognition from the Union and by bypassing the Union and negotiating wage rates directly with unit employees, we shall order the Respondents to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement.

Having further found that the Respondents have violated Section 8(a)(5) and (1) by refusing to continue in effect all of the terms and conditions of the 2009–2012 agreement by, inter alia, failing to meet and respond to

² We find it unnecessary to pass on the complaint's additional allegation that the Respondents' unlawful conduct described in paragraph 9 also violated Sec. 8(a)(5) because such a finding would not affect the remedy in this proceeding.

³ In this regard, we find that the remedies due should not be limited to those specified in the settlement agreement. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations." The General Counsel has requested, in his Motion for Summary Judgment, that the Board "issue a Decision containing findings of fact, conclusions of law, and an Order, all consistent with the allegations in the Reissued Amended Consolidated Complaint against Respondents and the prayer for relief set forth therein." Thus, under this language, it is appropriate to provide the customary remedies, including rescission of unlawful unilateral changes in terms and conditions of employment, reinstatement, full backpay and benefits, expungement of the Respondents' personnel records, and notice posting. See *L.J. Logistics, Inc.*, 339 NLRB 729, 730–731 (2003).

grievances since about December 20, 2011, and on about January 2, 2012, unilaterally reducing unit employees' rates of pay, number of paid holidays, and paid vacation; unilaterally changing unit employees' health, dental, short and long term disability, life, and AD&D insurance; and unilaterally eliminating the contractual seniority provisions, we shall order the Respondents to honor and abide by the terms of the 2009-2012 agreement, until such time as the Respondents and the Union reach an agreement or a lawful impasse based on good-faith negotiations, and on request, to rescind these unilateral changes. We shall also order the Respondents to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of these unlawful changes, in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010).

Additionally, having found that the Respondents have violated Section 8(a)(5), (3), and (1) by failing to recall employees Howard Kapp and William Ruff and Section 8(a)(3) and (1) by causing the termination of employees Mark Bunton, Jeffrey Gryca, and Ronald Vincent, we shall order the Respondents to offer these employees full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

We shall also order the Respondents to make Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca and Ronald Vincent whole for any loss of earnings and other benefits suffered as a result of the Respondents' unlawful actions that resulted in the termination of their employment. The backpay due under this part of our order shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, we shall order the Respondents to compensate all unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

Finally, the Respondents shall be required to remove from their files and records all references to the unlawful failures to recall and terminations, and to notify the discriminatees in writing that this has been done and that the unlawful references will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondents, Gentner Trucking Co. and Gentner, Inc., Debtor-in-Possession, a single employer, and/or joint employers, and/or alter egos, Saline, Michigan, their officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Withdrawing recognition from Local 164, International Brotherhood of Teamsters (the Union), and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.
- (b) Bypassing the Union and negotiating wage rates directly with unit employees.
- (c) Failing and refusing to continue in effect all of the terms and conditions of the 2009–2012 agreement, including by failing to meet about and respond to grievances and by making unilateral changes without first notifying the Union and giving it an opportunity to bargain.
- (d) Failing to recall and causing the termination of employees because they engage in protected concerted activities or because of their support for and activities on behalf of the Union.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees engaged in the transportation of aggregate commodities of every kind of nature, cinders, clay, sand, gravel, dirty dry and wet batch concrete, mixed or unmixed earth, fill material, barrow material, marl, pebbles, stones chips and slag, when such commodities are being transported by a certified motor carrier, that, a carrier holding a certificate duly issued by the Michigan Public Service Commission to transport any or all such commodities, or any or all of such commodities as are being transported by an independent carrier for hire, employed by Respondents at or out of its Saline facility, but excluding guards and supervisors as defined in the Act.

- (b) On request by the Union, meet and respond to grievances and rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented about January 2, 2012, including reducing unit employees' rates of pay, number of paid holidays, and paid vacation; changing unit employees' health, dental, short and long term disability, life, and AD&D insurance; and eliminating the contractual seniority provisions.
- (c) On request by the Union, continue in effect all of the terms and conditions of employment contained in its 2009-2012 collective-bargaining agreement until such time as the Union and the Respondent reach agreement on a new collective-bargaining agreement or a lawful impasse based on good-faith negotiations.
- (d) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondents' unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.
- (e) Within 14 days from the date of this Order, offer Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca, and Ronald Vincent full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (f) Make Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca and Ronald Vincent, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.
- (g) Compensate Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca, Ronald Vincent, and any other affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.
- (h) Within 14 days from the date of this Order, remove from their files any reference to the unlawful failures to recall Howard Kapp and William Ruff and the unlawful terminations of Mark Bunton, Jeffrey Gryca, and Ronald Vincent, and within 3 days thereafter, notify the employees in writing that this has been done and that the failures to recall and terminations will not be used against them in any way.
- (i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an elec-

- tronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (i) Within 14 days after service by the Region, post at its Saline, Michigan facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 20, 2011.
- (k) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 23, 2014

Mark Gaston Pearce,	Chairman
Philip A. Miscimarra,	Member
Kent Y. Hirozawa,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from Local 164, International Brotherhood of Teamsters (the Union), or fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT bypass the Union and negotiate wage rates directly with unit employees.

WE WILL NOT fail and refuse to continue in effect all of the terms and conditions of the 2009–2012 agreement, including by failing to meet and respond to grievances or by making unilateral changes without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail to recall or cause the termination of employees because they engage in protected concerted activities or because of their support for and activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees engaged in the transportation of aggregate commodities of every kind of nature, cinders, clay, sand, gravel, dirty dry and wet batch concrete, mixed or unmixed earth, fill material, barrow material, marl, pebbles, stones chips and slag, when such commodities are being transported by a certified motor carrier, that, a carrier holding a certificate duly issued by the Michigan Public Service Commission to transport any or all

such commodities, or any or all of such commodities as are being transported by an independent carrier for hire, employed by us at or out of our Saline facility, but excluding guards and supervisors as defined in the Act.

WE WILL, on request by the Union, meet and respond to grievances and rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented about January 2, 2012, including reducing unit employees' rates of pay, number of paid holidays, and paid vacation; changing unit employees' health, dental, short and long-term disability, life, and AD&D insurance; and eliminating the contractual seniority provisions.

WE WILL, on request by the Union, continue in effect all of the terms and conditions of employment contained in our 2009–2012 collective-bargaining agreement until such time as we reach agreement with the Union on a new collective-bargaining agreement or until we reach a lawful impasse based on good-faith negotiations.

WE WILL make our employees in the bargaining unit whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca, and Ronald Vincent full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca, and Ronald Vincent whole for any loss of earnings and other benefits resulting from our failure to recall them or their terminations, less any net interim earnings, plus interest.

WE WILL compensate Howard Kapp, William Ruff, Mark Bunton, Jeffrey Gryca, Ronald Vincent, and any other affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful failures to recall Howard Kapp and William Ruff and to the unlawful terminations of Mark Bunton, Jeffrey Gryca, and Ronald Vincent, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the failures to recall and terminations will not be used against them in any way.

GENTNER TRUCKING CO. AND GENTNER, INC.